

REMARKS

Claims 1-24 are pending in the present application. Claims 11-24 were previously withdrawn from prosecution and are deleted herewith as being drawn to a non-elected invention. Claims 1-10 are currently under examination. Applicant is canceling herewith Claim 7. Applicant is amending herewith Claims 1, 6, and 8-10. Applicant submit that all claims are now in condition for allowance. Applicant is also voluntarily amending the specification herewith to clarify a portion for the description. Support for these amendments can be found throughout the specification.

The Office Action:

Claims 6-10 were rejected under 35 U.S.C. §112, first paragraph, as lacking an antecedent basis. Claims 1-10 were rejected under 35 U.S.C. §102(b) as being completely anticipated and unpatentable over the patent to Clarke (U.S. Patent No. 1,103,484). Applicant respectfully traverse the foregoing rejections.

The Rejection Under 35 U.S.C. §112:

Claims 6-10 were rejected under 35 U.S.C. §112, first paragraph, as lacking an antecedent basis. The rejection states that each of Claims 6-10 includes the term “said applicator tip” and that such term lack antecedent basis in Claim 1. Applicant respectfully traverses this rejection.

Applicant submits that there is not requirement in the Patent Laws or the regulation that require a term in a claim to have an antecedent basis. Novertheless, in the interest of furthering prosecution, Applicant is amending Claims 6 and 8-10 herewith to change the term “said applicator tip” to “said applicator portion.” Claim 7 is deleted herewith. Applicant submits

that this amendment is not a narrowing amendment and that the scope of these claims is unchanged. Applicant further submits that the term “said applicator portion” has antecedent basis and that Claims 6 and 8-10 comply with 35 U.S.C. §112, first paragraph. Accordingly, applicant respectfully requests that the rejection under 35 U.S.C. §112 be withdrawn.

The Rejection Under 35 U.S.C. §102:

Claims 1-10 were rejected under 35 U.S.C. §102(b) as being completely anticipated and unpatentable over the patent to Clarke. The rejection states that Clarke discloses a tool having all of applicant’s claimed structure including an elongate body, a handle portion, an applicator portion including prongs, with the tool further including a fluid inlet and a valve. Applicant respectfully traverses this rejection.

The patent to Clarke relates to a hand concrete mixer. The tool is designed to provide an “implement which may be used for the purpose of stirring and mixing the material as a hoe or a rake is now ordinarily used, and which will at the same time supply the mixture the water necessary to render it of the desired consistency.” However, the device disclosed in Clarke does not a device having an applicator portion sized and shaped for insertion under soil and forming an elongate opening in said soil by lateral movement of said handle portion as presently required by Claim 1. Furthermore, the elements identified as “6 and 7” in Clarke do not have a wedge-shaped tip portion for cutting sod and penetrating soil. Thus, the implement disclosed in Clarke could not be used for “forming a relatively shallow and narrow furrow or hole or slit in soil; *i.e.*, approximately 6 to 12 inches below the soil’s surface” as the present invention is intended to be used.

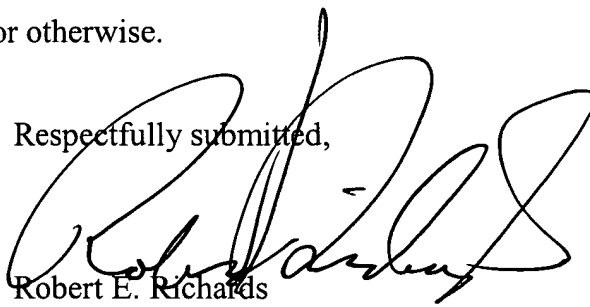
In order for Clarke to anticipate the presently claimed invention, Clarke must disclose each and every element of, for example Claim 1. As stated above, Clarke does not

disclose at least the following two elements of Claim 1: (1) a device having an applicator portion sized and shaped for insertion under soil and forming an elongate opening in said soil by lateral movement of said handle portion, and (2) wedge-shaped tip portion for cutting sod and penetrating soil. Since Clarke does not disclose all of the elements of Claim 1, Clarke cannot anticipate Claim 1. Therefore, rejection of Claims 1-10 under 35 U.S.C. §102(b) is improper and should be withdrawn. Such action is respectfully requested.

Conclusion:

Applicants respectfully request reconsideration of the present application in view of the foregoing remarks. Applicant submits that all claims are in condition for allowance. Such action is courteously solicited. Applicants further request that the Examiner call the undersigned counsel if allowance of the claims can be facilitated by examiner's amendment, telephone interview or otherwise.

Respectfully submitted,



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